**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF ILLINOIS**
**EASTERN DIVISION**

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| JOSE TRUJILLO, individually and on behalf of all others similarly situated,<br><br>Plaintiff,<br><br>v.<br><br>APPLE COMPUTER, INC., a California Corporation, and AT&T MOBILITY LLC, a Georgia Corporation,<br><br>Defendants. | No. 07 CV 04946<br><br>Judge Kennelly<br>Mag. Judge Ashman |

**DEFENDANT AT&T MOBILITY LLC'S CORRECTED RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY AND MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION AND DISMISS ACTION**

Plaintiff Jose Trujillo has requested leave to submit as supplemental authority an order denying ATTM's motion to compel arbitration in a case in federal district court in California. *Stiener v. Apple Computer, Inc.*, 2008 WL 691720 (N.D. Cal. Mar. 12, 2008), *appeal pending*, No. 08-15612 (9th Cir.). Although ATTM has no objection to the Court's consideration of the *Stiener* order, that order has little bearing here. The court in *Stiener* evaluated ATTM's arbitration provision under ***California*** law. Under the court's view of California law—which we ubmit is mistaken—an arbitration provision requiring individual adjudication is unconscionable unless it "functions as well as a class action would" in ensuring "that *all*" putative class members "would recover more, on average," in individual arbitration than in a class action. *Id.* at *12, *13 (emphasis in original). By contrast, the Illinois Supreme Court has held that "[i]t is not unconscionable or even unethical for a business to attempt to limit its exposure to class arbitration or litigation" (857 N.E.2d at 278) so long as "the agreement containing the waiver is not burdened by other features limiting the ability of the plaintiff to obtain a remedy for the particular claim being asserted in a cost-effective manner." *Kinkel v. Cingular Wireless LLC*, 857 N.E.2d 250, 274, 278 (Ill. 2006). As we have explained, ATTM's arbitration provision is fully enforceable under *Kinkel*. Arb. Mem. (Dkt. No. 37) 8–10; Reply Mem. (Dkt. No. 77) 6–13. To the extent that other states' views on unconscionability are relevant here, another federal district court has upheld ATTM's arbitration provision under Arkansas law. *See Davidson v. Cingular Wireless LLC*, 2007 WL 896349 (E.D. Ark. Mar. 23, 2007).

It is true that the *Stiener* court held that the FAA, as interpreted by the Ninth Circuit, does not preclude California from deeming arbitration provisions requiring individual adjudication to be unconscionable. 2008 WL 691720, at *16–*17. No other circuit, however, shares the Ninth Circuit's view. For example, Judge Buckwalter of the Eastern District of Pennsylvania recently held that, under the Third Circuit's interpretation of the FAA in *Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007), the FAA does preempt Pennsylvania law deeming such arbitration provisions to be unconscionable. *Weinstein v. AT&T Mobility Corp.*, 2008 WL 1914754, at *5 (E.D. Pa. May 1, 2008) (attached). ATTM respectfully requests leave to submit *Weinstein* as additional authority in support of its motion to compel arbitration.

Dated: May 5, 2008

Respectfully submitted,

/s Sarah E. Reynolds

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## CERTIFICATE OF SERVICE

I, Sarah E. Reynolds, an attorney, I hereby certify that on May 5, 2008, I electronically filed the foregoing **DEFENDANT AT&T MOBILITY LLC'S CORRECTED RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY AND MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION AND DISMISS ACTION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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